

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

<b>JAMES D. YOUNG</b>	:	CASE NO. 1:10CV483
	:	
<b>Plaintiff</b>	:	<b>JUDGE MICHAEL R. BARRETT</b>
	:	
<b>v.</b>	:	
	:	
<b>GANNETT SATELLITE</b>	:	<b>JOINT FINAL</b>
<b>INFORMATION NETWORK, INC.</b>	:	<b>PRE-TRIAL ORDER</b>
	:	
<b>Defendant</b>	:	

This action came before the Court for a final pretrial conference held on November 15, 2011 at 9:30 a.m., pursuant to Rule 16, Federal Rules of Civil Procedure.

**I. APPEARANCES:**

**PLAINTIFF:**

Stephen E. Imm (0040068)  
Katz, Greenberger & Norton LLP  
105 E. Fourth St., Ste. 400  
Cincinnati, Ohio 45202  
Telephone: (513) 698-9365  
Email: sei@kgnlaw.com

**DEFENDANT:**

Steven P. Goodin (0071713)  
John C. Greiner (0005551)  
Graydon Head & Ritchey LLP  
1900 Fifth Third Center  
511 Walnut Street  
Cincinnati, Ohio 45202  
Telephone: (513) 621-6464  
Email: sgoodin@graydon.com

**II. NATURE OF ACTION AND JURISDICTION:**

A. This is an action brought by Plaintiff for defamation of character.

- B. The jurisdiction of the Court is invoked under Title 28, United States Code, Section 1332.
- C. The jurisdiction of the Court is not disputed.

**III. TRIAL INFORMATION:**

- A. The estimated length of trial is four (4) days.
- B. Trial to a jury has been set for December 19, 2011, pursuant to the General Order on Trial Assignment.
- C. Three sets of each party's exhibits shall be delivered to Chambers at least three (3) days prior to the start of trial; this includes one original and two copies.

**IV. AGREED STATEMENTS AND LISTS:**

A. General Nature Of The Claims Of The Parties:

(1) PLAINTIFF'S CLAIMS:

Plaintiff claims that Defendant libeled him in an article it published on May 26, 2010 in the "Milford-Miami Advertiser," and re-published on the internet.

(2) DEFENDANT'S CLAIMS:

No counterclaims have been asserted.

B. Pending Motions/Motions in Limine:

- 1. Defendant's Motion for Summary Judgment is pending at this time. It has been fully briefed.
- 2. Plaintiff at this time does not anticipate filing Motions in Limine, but reserves the right to do so.
- 3. Defendant at this time does not anticipate filing Motions in Limine, but reserves the right to do so.

C. Uncontroverted Facts:

The following facts are established by admissions in the pleadings or by stipulations of counsel.

1. Plaintiff James D. Young is a Sergeant in the Miami Township Police Department.
2. Defendant is engaged in the business of publishing newspapers, including what are referred to as the “Community Press” newspapers.
3. Among the newspapers published by Defendant is the “Milford-Miami Advertiser,” which is distributed in Milford and Miami Township, Ohio.
4. On the front page of the May 26, 2010 issue of the Milford-Miami Advertiser, an article appeared under the headline “Cop’s suspension called best move for City.”
5. Plaintiff was not the “cop” referred to in the headline, but appearing within the article, and on the front page of the newspaper, were two paragraphs pertaining to allegations that had been made against Plaintiff in 1997.
5. In discussing the 1997 allegations, Defendant stated that “Young had sex with a woman while on the job.”
6. The aforesaid article was republished in other Gannett-owned publications, including the internet version of the Cincinnati Enquirer.

D. Contested Issues of Fact and Law

1. Contested Issues of Fact: The contested issues of fact remaining for decision are:
  - a. Whether Defendant’s statement that “Young had sex with a woman while on the job” was true or substantially true.
  - b. Whether Defendant published its statement about Plaintiff with actual malice:

- i.) Whether Defendant published the statement despite possessing knowledge that it was false;
    - ii.) Whether Defendant published its statement about Plaintiff with a reckless disregard for whether it was false;
    - iii.) Whether Defendant entertained serious doubts as to the truth of its statement about Plaintiff.
  - c. If Defendant's statement about Plaintiff is found to be false and defamatory, whether he suffered only "incremental harm" as a result of the statement.
  - d. The amount of compensatory damages, if any, to be awarded to Plaintiff.
  - e. The amount of punitive damages, if any, to be awarded to Plaintiff. (See Contested Issue of Law "e".)
  - f. In the event Defendant is found liable for punitive damages, whether it should also be liable for Plaintiff's attorney fees. (See Contested Issue of Law "d".)
2. Contested Issues of Law: The contested issues of law, in addition to those implicit in the foregoing issues of facts, are:
- a. Whether Ohio recognizes a "neutral reportage" privilege.
  - b. Whether Defendant's statement about Plaintiff constituted a "fair report" of the contents of the available record.
  - c. Whether Defendant's statement about Plaintiff is reasonably subject to an "innocent construction."
  - d. Whether Defendant's claimed liability for Plaintiff's attorney fees is determined by the Court or the jury.
  - e. Whether Plaintiff's claim for punitive damages should be determined in a bifurcated proceeding.

E. Witnesses

1. In the absence of reasonable notice to opposing counsel to the contrary, Plaintiff will call, or will have available at the trial:

James D. Young  
Kendra Young  
Amber Young  
Ashley Price  
Al Fatute  
Fred Fatute  
Michael Ray  
Tim Mulvihill  
Theresa Herron (as on Cross-Examination)  
Kellie Geist (as on Cross-Examination)  
Mary Wolff

2. In the absence of reasonable notice to opposing counsel to the contrary, Defendant will call, or will have available at the trial:

Theresa Herron  
Kellie Geist  
Marc Emral  
R. Steven Bailey  
David Duckworth

3. There is reserved to each of the parties the right to call such rebuttal witnesses as may be necessary, without prior notice thereof to the other party.

F. Expert Witnesses

Not applicable.

G. Exhibits

Appendix A- Joint Exhibits. (The parties stipulate to the admissibility of items identified as "Joint Exhibits.")

H. Depositions

At this time, neither party anticipates offering the testimony of any witnesses by way of deposition. Each party reserves the right to do so, however, in the event it is determined that any witness is unavailable to testify in person at trial.

I. Completion of Discovery

Discovery has been completed.

J. Miscellaneous Orders

None at this time.

V. **MODIFICATION:**

This Final Pretrial Order may be modified at the trial of this action, or prior thereto, to prevent manifest injustice. Such modification may be made by application of counsel or on motion of the Court.

VI. **SETTLEMENT EFFORTS:**

To this point, the parties have not engaged in any settlement discussions.

**IT IS SO ORDERED.**

/s/ Michael R. Barrett

MICHAEL R. BARRETT  
United States District Judge

/s/ Stephen E. Imm

Stephen E. Imm (0040068)  
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/s/ John C. Greiner

John C. Greiner (0005551)  
Steven P. Goodin (0071713)  
Counsel for Defendant

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**JAMES D. YOUNG**

**Plaintiff**

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**GANNETT SATELLITE  
 INFORMATION NETWORK, INC.**

**Defendant**

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 : **JUDGE MICHAEL R. BARRETT**  
 :  
 :  
 :  
 : **JOINT EXHIBIT LIST**  
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Exhibit No.	Date Offered	Admitted	Bates #	Date	Description
JX1				5/26/10	May 26, 2010 edition of Milford-Miami Advertiser
JX2				5/26/10	Article headlined, "Cop's suspension called best move for City"
JX3				Various	Defendant's binder of documents concerning 1997 allegations against Plaintiff, and associated legal proceedings
JX4				Various	Collection of web pages reflecting re-publication of May 26, 2010 article
JX5				Various	Records of Miami Valley Regional Crime Laboratory concerning DNA testing conducted on Plaintiff and items belonging to Marcey Phillips
JX6				N/A	Defendant's Standards of

					Conduct
JX7				N/A	Defendant's Answers to Plaintiff's First Set of Interrogatories

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